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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 0047 (DLC)

5 MAHMOUD THIAM,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 August 10, 2018  
11:35 a.m.

10 Before:

11 HON. DENISE COTE

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the  
16 Southern District of New York

ELISHA KOBRE

17 Assistant United States Attorney

18 AARON M. GOLDSMITH

19 Attorney for Defendant

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(Case called)

MR. KOBRE: Good morning, your Honor.

Elisha Kobre for the government.

MR. GOLDSMITH: Aaron Goldsmith on behalf of Sociedade Saboeira de Nacala.

THE COURT: Good morning. Welcome. Good to see you both.

So where do we stand on this application? I understand that a petition is to be filed and that the parties are trying to resolve it.

Mr. Kobre.

MR. KOBRE: Sure, your Honor. So in April of this year defense counsel on behalf of Sociedade Saboeira de Nacala filed a petition essentially claiming an interest in the property that your Honor had ordered forfeited back in August at the time of defendant's sentencing.

We've engaged in some discussions to try to -- really for the government to get a better understanding of the claim and to see whether it could be resolved as it often is in these cases.

I understand from defense counsel that he has had some difficulty being in touch with his client who is not U.S.-based. So those conversations have unfortunately not really gone anywhere at all.

In the meantime, the government was contacted by a

I8a9thic

1 Dutchess County attorney. The subject property that is the  
2 subject of the forfeiture is a property located in Dutchess  
3 County. As your Honor will recall, the evidence at trial was  
4 that this property was purchased in part through a  
5 375,000-dollar wire transfer that was in essence coming from  
6 the bribe proceeds that the government proved up. And that's  
7 our basis for the forfeiture.

8 So, in the interim, in the last several months, a  
9 month or two ago, the government was contacted by a Dutchess  
10 County attorney who informed us that there is a tax lien on the  
11 property. As of, I think, of 2016 it was about \$50,000. But  
12 we've had a subsequent conversation. Now, as of July of this  
13 year, it's roughly \$200,000. The taxes have not been paid in  
14 some time on the property.

15 The reason why the Dutchess County attorney reached  
16 out to us is they would like to essentially foreclose on the  
17 property and sell the property and use the proceeds to pay off  
18 the tax lien.

19 The government -- we have had internal conversations  
20 in our office and what we would like to do and what we plan to  
21 do to submit to your Honor a stipulation and order whereby we  
22 would actually allow Dutchess County to go forward with their  
23 sale under the agreement that they would take the -- whatever  
24 it is that their tax lien is and the excess would come back to  
25 the marshal service to be dealt with in this proceeding in

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1 essence so that this way they can get their money. And this is  
2 something we're far along in that process and, quite frankly, I  
3 think the reason I don't have a stipulation to your Honor  
4 already is because the Dutchess County attorney was away on  
5 vacation for the last two weeks or so.

6 According to the Dutchess County attorney, apparently  
7 it's a lengthy process. Assuming your Honor signs off on that  
8 and they can go forward with their foreclosure sale, the  
9 property will be sold on October 17. That's the date they have  
10 designated for the sale of a number of properties that are  
11 being foreclosed on in Dutchess County. And so we have these  
12 two parallel things in essence happening. We haven't really  
13 gotten anywhere on the discussions for settling this claim.  
14 But we also have the Dutchess County tax issue.

15 So what I've discussed with defense counsel and what I  
16 would propose for your Honor, understanding that we've already  
17 had a fair amount of delay here, is to set a discovery schedule  
18 which I can propose for your Honor, discovery and quite frankly  
19 a motion schedule for dispositive motions, but that the initial  
20 date for that discovery would be November 1. In essence  
21 November 1 would be the date by which the parties need to serve  
22 interrogatories on each other. And the reason for the  
23 November 1 date is because that -- by that time we expect to  
24 know if there's any money essentially leftover from the sale of  
25 that foreclosure proceeding.

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1 I'm advised even though the property is -- was  
2 purchased, we understand the purchase price of the property was  
3 over \$3 million, that when they sell it there is no minimum bid  
4 and so it may be that there is no money leftover after the tax  
5 lien is developed. But we would propose that the first date be  
6 November 1 for the service of interrogatories. And I have a  
7 full schedule to propose to your Honor if your Honor was  
8 inclined, but I'll just stop there and that's really where  
9 things stand from the government's perspective.

10 THE COURT: Am I incorrect that there was a need for  
11 an amended petition here?

12 MR. GOLDSMITH: The amended petition was already  
13 filed.

14 THE COURT: And do you know the date?

15 MR. GOLDSMITH: Not off the top of my head. It was  
16 something we've done quite a while ago.

17 MR. KOBRE: I have it, your Honor. Just one moment.

18 MR. GOLDSMITH: I want to say it was the beginning of  
19 June.

20 MR. KOBRE: I believe, your Honor, it was April 8,  
21 2018. That's the date I have here, the ECF stamp on what I  
22 understand to be the amended petition.

23 THE COURT: So as far as the government is concerned  
24 the amended petition is satisfactory to bring this claim?

25 MR. KOBRE: That's correct, your Honor. Although I

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1 will point out -- and this I have not yet discussed with  
2 defense counsel, but the claim is being made on behalf of an  
3 entity called Sociedade Saboeira de Nacala. And that was the  
4 entity that initially purchased the property.

5 This goes back a ways. But at trial the government  
6 proved up, and we have records to show, that the property was  
7 subsequently sold by that entity to another entity called AMERI  
8 Holdings. So we actually think that the property is actually  
9 owned by AMERI Holdings and that it would probably be their  
10 claim as a proper manner. But we don't think that that -- that  
11 there's anything procedurally improper with the filing that's  
12 already been made. It would just be a basis for potentially  
13 dismissing the claim.

14 THE COURT: So Mr. Goldsmith, you don't represent  
15 AMERI Holdings?

16 MR. GOLDSMITH: No. Sociedade Saboeira de Nacala.

17 I have spoken to them on several occasions and I even  
18 brought up that transfer to which their response was it is our  
19 property.

20 THE COURT: Who are you dealing with?

21 MR. GOLDSMITH: Mr. Rajahusseini who is the counterpart  
22 of I guess I would say Chief Executive Officer of the  
23 corporation, as well as another individual named Pedro Matta,  
24 who seems to be not an officer but I guess I would couch him as  
25 an executive assistant.

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1 THE COURT: And there was reference to the difficulty  
2 you've had in communicating with your client.

3 MR. GOLDSMITH: Yes.

4 THE COURT: And can you describe that for me a little  
5 bit.

6 MR. GOLDSMITH: Sure. Initially through the process  
7 in the spring they were quite responsive. And I had charged  
8 them with finding additional documentation that would prove up  
9 their bona fide interests. They said they were working on it.

10 Over the last probably eight weeks or so despite my  
11 e-mails reporting to them about -- once I learned about the tax  
12 lien, about asking them for updates, informing them of this  
13 court date, and asking them to get back in contact with me to  
14 report their progress and to discuss the matter I have received  
15 zero response.

16 THE COURT: So, what is your reaction to the  
17 stipulation proposed by the government in connection with the  
18 sale in Dutchess County?

19 MR. GOLDSMITH: While I think -- while I'm remiss to  
20 have to put this out further given the length of time it's been  
21 calendared, I think it's the only way to make sense given  
22 Dutchess County's right to act on the property. I think we  
23 have to let them progress with whatever legal proceedings they  
24 need to and then, therefore, react. So I'm in agreement with  
25 the proposal.

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1           And I also want to alert the Court I did discuss with  
2 Mr. Kobre before the only concern that I have at this point  
3 knowing, because I've attempted to discuss the matter with  
4 Dutchess County. They have not returned my calls. However,  
5 Mr. Kobre has given me some direct contact information with the  
6 people who are responsible for me to try and get in contact  
7 with them directly going forward.

8           My only concern going now is obviously I have a duty  
9 to report to the corporation in Zimbabwe. I will report to  
10 them what's going on. My understanding from other unrelated  
11 matters is that if the tax lien is paid off, then title would  
12 be cleared, and I will warn them that if they so choose to pay  
13 off the tax lien prior to the sale that it would still not  
14 avail them of any title under these circumstances and that they  
15 would have to notify me of everything so that we would be able  
16 to preserve the government's interests in these proceedings.

17           THE COURT: Thank you.

18           So, Mr. Kobre, Dutchess County's interest is to get  
19 the property sold for \$200,000.

20           MR. KOBRE: That's correct, your Honor.

21           THE COURT: If the sale exceeded 200,000, the  
22 government succeeded in resisting this petition, where would  
23 the money go?

24           MR. KOBRE: So, your Honor, by agreement with Dutchess  
25 County, of course subject to your Honor's approval, any excess



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1 money above the tax lien would come back to the marshal service  
2 and would be part of this proceeding, assuming the government  
3 prevailed in this proceeding, that money would be forfeited  
4 pursuant to a final order of forfeiture to be entered by the  
5 Court.

6 THE COURT: To whom? The government? The treasury?

7 MR. KOBRE: Yes, your Honor.

8 THE COURT: So there is no victim here other than the  
9 United States?

10 MR. KOBRE: That's correct, your Honor.

11 THE COURT: So we don't have a bank or someone else  
12 who would seek recovery?

13 MR. KOBRE: Correct.

14 Your Honor may recall there was no restitution order  
15 and there were no victim -- identifiable victims in this case.

16 THE COURT: Well, theoretically the people of a  
17 foreign country.

18 MR. KOBRE: Yes, your Honor. The Republic of Guinea.  
19 But our position I think at sentencing was that they weren't  
20 technically victims under the victim -- the MVRA or the other  
21 victim statutes.

22 THE COURT: And, Mr. Kobre, are you working with your  
23 office's civil division or forfeiture division on these issues?

24 MR. KOBRE: I am, your Honor, very closely, because of  
25 my lack of familiarity as just a regular plain old criminal

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1 AUSA so I'm working closely with them to work through these  
2 issues. And I've discussed with our forfeiture unit today --  
3 first of all, in conjunction with them, this idea of consenting  
4 to the Dutchess County sale, foreclosure sale, and also -- and  
5 so, yes, that's been done in consultation with.

6 THE COURT: Well it seems to me that both parties  
7 before me in this courtroom today would have an interest in the  
8 sale recovering as much money as possible, that is something  
9 north of \$200,000. And if Dutchess County is going to run the  
10 sale its interests is in recovering its \$200,000. So, do the  
11 parties before me here in this courtroom participate in any way  
12 in how the property is sold or advertised for sale or do you  
13 just leave that entirely to Dutchess County?

14 MR. KOBRE: Your Honor, it would be just entirely left  
15 to Dutchess County.

16 MR. GOLDSMITH: Yes. Unfortunately, your Honor, in my  
17 experience in other matters the only role that my client could  
18 take would be to, assuming that I can revive my communications  
19 with them in time, is to file a petition prior to the  
20 foreclosure in Dutchess County which is what I've asked them  
21 for information to do.

22 THE COURT: Thank you. Very helpful.

23 So, let us say that it's sold for something north of  
24 \$200,000 so that there is some asset deposited into the custody  
25 of the court or the marshal service and, therefore, a live

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1 dispute before me pursuant to this petition as to who that  
2 money should be sent to, either the U.S. Treasury or the  
3 petitioners, what discovery, if Mr. Goldsmith's clients are not  
4 cooperating with him, then that's the end of the matter and  
5 I'll just dismiss the petition.

6 MR. GOLDSMITH: I'm not sure if the government would  
7 need to file a default motion upon discovery under Rule 26 of  
8 the CPLR but it would be something along those lines, yes.

9 THE COURT: And so if Mr. Goldsmith's clients are  
10 cooperating with him, then the government wants some documents  
11 and potentially some testimony. Is that where we are?

12 MR. KOBRE: It is where we are.

13 THE COURT: So let's see if we can jump start this.

14 Mr. Goldsmith hasn't had any communication for some  
15 time now from his clients. So, Mr. Goldsmith, we have this  
16 date of sale, October 17, 2018 and the parties are proposing  
17 November 1, 2018 to kickstart litigation here. So I'll take a  
18 status letter from the parties on November 1, 2018. Let me  
19 just make sure that's a weekday. November 1, 2018. And I'd be  
20 happy to issue an order today, Mr. Goldsmith, if that is of  
21 assistance to you. But essentially unless your clients have  
22 been in communication with you between today and November 1,  
23 2018 and give me grounds to believe that they will cooperate in  
24 discovery, I am going to dismiss the petition. Would you like  
25 me to issue an order to show cause to that effect so that you

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1 can have that to send your clients?

2 MR. GOLDSMITH: I appreciate that. Thank you.

3 THE COURT: And then, of course, if they have been in  
4 communication with you, then it makes sense to start discovery  
5 and the parties will make a proposal to me on November 1 for a  
6 schedule for that discovery with motion practice to follow.

7 Good. We have a schedule.

8 MR. KOBRE: Thank you, Judge.

9 So I expect that as soon as the Dutchess County  
10 attorney returns and signs the proposed stipulation and order  
11 that I'll have that to the Court.

12 THE COURT: Wonderful. Have a good summer, what  
13 remains of it. Thanks, counsel.

14 (Adjourned)

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